IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1549 of 1989
With
SPECIAL CIVIL APPLICATION No. 1721 of 1989
To
SPECIAL CIVIL APPLICATION No. 1729 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

PURNIMABENKISHORCHANDRA - Petitioner(s)
Versus
STATEOFGUJARAT & 11 - Respondent(s)

==========

Appearance :
MR PJ VYAS for Petitioner in all matters

MR DIPEN DESAI AGP for Respondent No.1 in SCA Nos.1549, 1721 to 1724 of 1989
MR M R MENGADE AGP for Respondent No.1 in SCA Nos.1725 to 1929 of 1989
NOTICE NOT RECD BACK for Respondent No.2,
MR VM TRIVEDI for Respondent Nos.3 to 8.
MR JR NANAVATI for Respondent Nos.9 to 12.
==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 30/09/2005

ORAL JUDGMENT

In this group of petitions, the respective petitioners have challenged the legality and validity of the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No.SRD-87 and 91 of 1984 dtd.25/7/1984 in quashing and setting aside the order dtd.4/11/1982 passed by the Taluka Development Officer granting Non-Agricultural Use Permission with respect to the land bearing Block No.75, which came to be taken under suo-motu review/revision by the Secretary

(Appeals), Revenue Department, State of Gujarat and a show cause notice was issued upon the original land owners. It appears from the record that the original land owners submitted reply to the said show cause notice on 23/5/1984 and in para 4 of the said reply, it is specifically mentioned by the respondent Nos.3 to 8 – original land owners that the land in question is already sold to other persons and the possession is already handed over to the other persons. It also appears that the respective petitioners claim that those persons who are sold the land bearing Block No.75, reference of which is made in para 4 of the reply to the show cause notice. It also appears that thereafter, the Secretary (Appeals), Revenue Department, State of Gujarat vide order dtde.25/7/1984 quashed and set aside the order dtd.4/11/1982 passed by the Taluka Development Officer granting Non-Agricultural Use Permission, for the reasons stated in the said order. Being aggrieved by and dissatisfied with the said order

passed by the Secretary in Revision Application Nos.SRD-87 and 91 of 1984 dtd.25/7/1984, the respective petitioners have preferred the present petition under Articles 226 and 227 of the Constitution of India.

2. Mr.P.J. Vyas, learned advocate appearing on behalf of the respective petitioners has submitted that though it was pointed out before the Secretary that the land in question is already sold to other persons, the impugned order has been passed by the Secretary, without giving any opportunity of being heard to those subsequent purchasers. Mr.Vyas has further submitted that the petitioners are those purchasers who have purchased the land in question by registered sale deed on 30/5/1983 and as the impugned order is against the petitioners as NA permission has been cancelled on the basis of which the petitioners have subsequently purchased the land in question, the

petitioners were required to be heard before passing the impugned order and as before cancelling the NA Permission granted by the Taluka Development Officer vide order dtd.4/11/1982 the petitioners are not heard, the impugned order passed by the Secretary (Appeals) is in breach of the principle of natural justice and hence the same requires to be quashed and set aside. Mr.Vyas has also further submitted that the Secretary (Appeals) has passed the impugned order on the ground that the original land owners had not paid the amount of premium which was required to be paid pursuant to the order passed by the Taluka Development Officer dtd.4/11/1982, However, the said amount was already paid and therefore, the Secretary (Appeals) was not justified in quashing and setting aside the NA Permission granted by the Taluka Development Officer, Mangrol vide order dtd.4/11/1982 and, therefore, requested to allow the present petition.

3. Mr.J.R. Nanavati, learned advocate appears on behalf of the newly added party who has purchased Block No.88 from the respondent Nos.3 to 8, after obtaining necessary permission from the competent authority under sec.43 of the Bombay Tenancy Act and after payment of premium.

4. Mr.P.J. Vyas, learned advocate appearing on behalf of the petitioners has submitted that so far as the petitioners are concerned, they do not claim any right with respect to the land bearing Block No.88 and the petitioners claim ownership with respect to the land bearing Block No.75 only.

5. Mr.J.R. Nanavati, learned advocate appearing on behalf of the respondent Nos.3 to 8 has submitted that in fact, the respondent Nos.3 to 8 have not sold plots alleged to have been sold in favour of the petitioners. However,

Mr.Vyas, learned advocate appearing on behalf of the petitioners has shown this court original registered sale deed, in which there is a reference to Block No.75. Be that it may, this court is not in the present proceedings concerned with the legality and validity of the sale deeds in favour of the respective petitioners, as this proceedings have arisen out of and with respect to the NA Permission with regard to the land bearing Block No.75 only and, therefore, this court is not expressing any opinion in the present proceedings.

6. Mr.P.J. Vyas, learned advocate appearing on behalf of the respective petitioners has submitted that the respondent Nos.3 to 8 herein who had earlier preferred Misc.Civil Application Nos.1097 to 1106 of 1991 and 1156 of 1991 in the present petitions, were required to deposit an amount of Rs.1500=00 per each Misc.Civil Application with the registry of this

court and in turn, the registry was directed to send the said amount to each of the petitioners by Account Payee Cheque and according to him, the said amount has not been deposited and/or paid to the respective petitioners, as ordered by this Court in the aforesaid Misc.Civil Applications vide order dtd.8/6/1991.

Mr.J.R. Nanavati, learned advocate appearing on behalf of the respondent Nos.3 to 8 has submitted that in fact, according to his instructions received from Mr.Vikram M. Trivedi, learned advocate appearing on behalf of the respondent Nos.3 to 8, the said amount is already deposited with the registry of this Court, however, he has submitted that if the said is not deposited with the registry, the respondent Nos.3 to 8 would deposit the said amount of Rs.1500=00 per each Misc.Civil Applications within a period of two weeks from today.

The registry is directed to comply with the directions issued by this Court in Misc.Civil Application Nos.1097 of 1991 and other allied matters vide order dtd.18/6/1991, the reference of which is made hereinabove and pay the said amount of Rs.1500=00 to each of the petitioners of this petition immediately, if the said amount is already deposited. However, if the said amount is not deposited, on depositing the said amount within a period of two weeks from today, the registry of this Court is directed to pay the said amount of Rs.1500=00 to each of the petitioners of the present petition immediately.

7. So far as the challenge to the order passed by the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No.SRD-87 and 91 of 1984 dtd.25/7/1984 in quashing and setting aside the order dtd.4/11/1982 passed by the Taluka Development Officer granting Non-

Agricultural Use Permission with respect to the land bearing Block No.75 is concerned, as the said order is passed without giving an opportunity of being heard to the petitioners, the same is in breach of principle of natural justice and hence the same requires to be quashed and set aside and the matter is required to be remanded to the Secretary (Appeals), Revenue Department, State of Gujarat for deciding the matter afresh, in accordance with law and on merits, giving an opportunity of being heard to the concerned parties inclusive of the petitioners.

8. It will be open for the petitioners to move an application before the Secretary (Appeals), Revenue Department, State of Gujarat in the Revision Application No.SRD-87 and 91 of 1984 for joining them as party respondent within a period of eight weeks from today. In case of filing such application by the petitioners,

Secretary (Appeals) is directed to allow said application and allow the petitioners to be joined as party respondents in the said proceedings.

9. For the reasons stated hereinabove, the petition succeeds. The impugned order passed by the Secretary (Appeals), Revenue Department, State of Gujarat passed in Revision Application No.SRD-87 and 91 of 1984 dtd.25/7/1984 in quashing and setting aside the order dtd.4/11/1982 passed by the Taluka Development Officer granting Non-Agricultural Use Permission with respect to the land bearing Block No.75, is hereby quashed and set aside and the matter is remanded back to the Secretary (Appeals) to decide the same afresh, in accordance with law and on merits, after giving an opportunity of being heard to all the concerned parties, inclusive of the petitioners herein, as expeditiously as possible, preferably within a

period of SIX MONTHS from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent in each of the petitions. However, there will be no order as to costs.

(M.R.SHAH,J.)

rafik